



Jennifer Burnett  
Senior Attorney & Public Information Coordinator

February 20, 2019

Justin Gordon  
Division Chief  
Open Records Division  
Price Daniel Building  
209 W. 14th Street, 6th Floor  
Austin, Texas 78701

**Re: Public Information Request from Stephan Neidenbach to The University of Texas at Dallas -- OGC# 189077**

Dear Mr. Gordon:

On February 7, 2019<sup>1</sup>, The University of Texas at Dallas ("University") received a request for information from Stephan Neidenbach ("Requestor") (**TAB 2**). The University subsequently sent the request to The University of Texas System ("UT System") for handling with your office.

In accordance with section 552.301 of the Texas Government Code, we now send this request for decision within ten business days from the date the request was received. UT System has copied the Requestor on this letter brief in accordance with section 552.301(d).

The Requestor seeks access to the following information:

*All emails to or from Matthew Brown, Center for Values in Medicine, Science, and Technology Department, with any of the following terms: kidney Sri Lanka glyphosate CKD CKDu*

The University will release most of the responsive information but asserts the remaining responsive information, submitted within **TAB 3**, is protected from disclosure under section 552.101 of the Texas Public Information Act ("Act").

### § 552.101 of the Texas Government Code

<sup>1</sup> The Requestor sent the present request outside regular business hours on February 6, 2019. Thus, the request is considered received the following business day.

**in conjunction with § 161.032 of the Health and Safety Code**

Under § 552.101 of the Texas Government Code, information is excepted from disclosure if it is “information considered to be confidential by law, either constitutionally, statutorily or by judicial decision.” Specific to this request, the requested information is protected from disclosure under § 161.032 of the Health & Safety Code, which provides in pertinent part:

- (a) The records and proceedings of a medical committee are confidential and are not subject to court subpoena.
- (c) Records, information, or reports of a medical committee, medical peer review committee, or compliance officer and records, information, or reports provided by a medical committee, medical peer review committee, or compliance officer to the governing body of a public hospital, hospital district, or hospital authority are not subject to disclosure under Chapter 552, Government Code.

TEX. HEALTH & SAFETY CODE § 161.032(a), (c). Section 161.031(b) of the Texas Health & Safety Code provides that a medical committee “includes a committee appointed ad hoc to conduct a specific investigation *or established under state or federal law* or rule or under the bylaws or rules of the organization or institution.” TEX. HEALTH & SAFETY CODE § 161.031(b) (emphasis added).

The responsive information consists of records of the University’s Institutional Animal Care Use Committee (“IACUC”). The University’s IACUC is a medical committee established under federal law. Specifically, 42 U.S. Code § 289d(b) requires the establishment of animal care committees at each entity which conducts biomedical and behavioral research. The University’s IACUC is charged with certifying that all research utilizing animal subjects, or using animal derived materials, conforms to principles and/or regulations enunciated by the University, the Department of Health and Human Services, and the U.S. Department of Agriculture.

The medical committee privilege “extends to documents...prepared by or at the direction of the committee for committee purposes . . .” *Jordan v. Ct. of App. For 4<sup>th</sup> Sup. Jud. Dist.*, 701 S.W.2d 644 (Tex. 1985). The information at issue was prepared by or at the direction of the University’s IACUC. Further, the confidentiality of IACUC documents has been well addressed by your office. See OR2002-6791, OR2007-06539, at 2-3; OR2009-03868, at 2-3; OR2009-08610, at 2-3 (prohibiting disclosure of research protocols and IACUC information at other UT System institutions). Accordingly, the information at issue is confidential by law under § 161.032 of the Texas Health & Safety Code and is thus excepted from disclosure in conjunction with § 552.101 of the Texas Government Code.

**Conclusion**

The University respectfully requests that the Attorney General review the arguments presented in this brief and issue a ruling that the responsive information is protected from disclosure under sections 552.101 of the Act.

All interested parties are listed below. If you need additional information, please do not hesitate to contact me at 512-579-5187.

Sincerely,



Jennifer Burnett

cc: Requestor: (w/o Enclosures)

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